



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
KENNY ROUNDTREE,)	
)	
)	
Complainant,)	
)	Charge No.: 2001CF2545
and)	EEOC No.: N/A
)	ALS No.: 11840
PARTYLITE GIFTS, INC.,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On May 8, 2001, Complainant, Kenny Roundtree, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent, Partylite Gifts, Inc., discriminated against Complainant on the basis of his race when it discharged him.

Respondent failed to appear for the IDHR's scheduled fact finding conference. As a result, the IDHR issued a Notice of Default against Respondent and filed a Petition for Hearing to Determine Complainant's Damages with the Illinois Human Rights Commission. The Commission granted the IDHR's petition, and the requested hearing on damages was held on September 16, 2002.

Despite being served with notice, Respondent did not appear at the scheduled damages hearing. Complainant, though, appeared and presented his evidence. The matter is ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Complainant, Kenny Roundtree, worked for Respondent, Partylite Gifts, Inc., for approximately one year.
2. Respondent discharged Complainant on January 23, 2001.
3. At the time of his discharge, Complainant was earning \$10.54 per hour and working approximately 48 hours per week.
4. When Complainant worked over forty hours per week, Respondent paid him time and a half for his overtime work.
5. Due to an injury, Complainant was unable to work during the period from January 23, 2001 until May 1, 2001.
6. Complainant does not want to be reinstated to his former job with Respondent.

CONCLUSIONS OF LAW

1. Complainant explicitly waived his right to reinstatement.
2. Complainant failed to prove entitlement to emotional distress damages.

DISCUSSION

On July 16, 2002, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to address. Only damages issues remain to be determined.

Complainant worked for Respondent for approximately one year. On January 23, 2001, following an accident, Respondent discharged Complainant.

A prevailing complainant is presumed to be entitled to reinstatement to the job lost due to unlawful discrimination. However, at the damages hearing, Complainant explicitly stated that he does not want to return to work with Respondent. Therefore, reinstatement is not recommended.

Nonetheless, Complainant is entitled to an award of backpay. At the time of his discharge, Complainant was earning \$10.54 per hour and working approximately 48 hours per week. He was paid time and a half, or \$15.81 per hour, for time worked over 40 hours per week. Thus, in an average week, Complainant earned \$548.08.

Unfortunately for Complainant, he was injured as a result of the January 23 accident. Because of his injury, he was unable to work until May 1. An award of damages is intended to place a prevailing complainant in the position he would have been in but for the effect of discrimination. Since Complainant could not work until May 1, that date is the appropriate starting point for calculating his lost backpay.

The damages hearing in this matter was held on September 16, 2002. From May 1, 2001 to the date of that hearing was a period of approximately seventy-two weeks. At \$548.08 per week, Complainant would have earned \$39,461.76 during that period.

Complainant was not employed during that period, so he had no interim earnings. Moreover, he did not receive any workman's compensation. As a result, the \$39,461.76 figure is the recommended backpay award.

Complainant failed to prove that he is entitled to compensation for emotional distress. He testified that he lost his apartment and that he could not pay his bills or do things for his children. There is no doubt that he was upset. However, there was no evidence on the length or severity of his emotional reactions.

There is no presumption of damages based upon a civil rights violation. *Kauling-Schoen and Silhouette American Health Spas*, ___ Ill. HRC Rep. ___, (1986SF0177, February 8, 1993). The Human Rights Commission presumes that recovery of pecuniary losses generally is enough to compensate a complainant for any emotional distress. See *Smith and Cook County Sheriff's Office*, 19 Ill. HRC Rep. 131 (1985). Complainant failed to prove that his emotional distress was significantly more intense than what is normally experienced by someone who is denied employment because of unlawful discrimination. Therefore, an award for emotional distress is not appropriate on this record.

It is appropriate, though, to award prejudgment interest on the backpay award. Because of the delay in his receipt of the money owed to him, such interest is necessary to make Complainant whole.

Respondent should be ordered to clear Complainant's personnel records of any references to this action or to the underlying charge. In addition, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of race.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of \$39,461.76 for lost backpay;

B. That Respondent pay to Complainant prejudgment interest on the backpay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

C. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

D. That Respondent be ordered to cease and desist from further unlawful discrimination on the basis of race.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: January 28, 2003